



NEW YORK
STATE OF
OPPORTUNITY™

**Empire State
Development**

2023 MWBE Disparity Study Request for Proposals

Issued: April 7, 2022

Submission Deadline: April 28, 2022 by 5:00 PM ET

IMPORTANT NOTICE: A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until approval of the Contract. Bidders are prohibited from contact related to this procurement with any New York State employee other than the designated contact listed below (refer to: Section IX – Letter i).

Designated Contacts for this Procurement:

Primary Contact: John Discolo
Secondary Contact: Ralph Volcy

All contacts/inquiries shall be made by email to the following address:

2023MWBEDISPARITY@esd.ny.gov

This RFP is posted on the Empire State Development website:

<https://esd.ny.gov/doing-business-ny/requests-proposals>

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I. INTRODUCTION

The mission of Empire State Development (“ESD”) is to promote a vigorous and growing state economy, encourage business investment and job creation, and support diverse, prosperous local economies across New York State through the efficient use of loans, grants, tax credits, real estate development, marketing and other forms of assistance.

II. OVERVIEW

Purpose

The New York State Urban Development Corporation D/B/A Empire State Development (“ESD”), on behalf of the State of New York (“NYS” or “State”), is seeking proposals from qualified vendors (hereinafter “Respondent” or “Bidder”) to conduct a complete, comprehensive and legally supportable statewide disparity study (“2023 Disparity Study” or “Study”) regarding (1) the State’s use of minority and women-owned business enterprises (“MWBES”) as State contractors and subcontractors, (2) the employment of women and minorities by State contractors and vendors on State Contracts, and (3) the State’s use of businesses owned by an Indian nation or tribe as State contractors and subcontractors as such term is defined in section two of the Indian law. ESD will evaluate all Proposals received in response to this Request for Proposals (“RFP”) in accordance to the selection criteria listed within this RFP. A Respondent that is selected through this RFP process and contracts with ESD to perform the services described in this RFP is referred herein as the “Selected Respondent.”

Disparity studies are the primary means by which states and large municipalities determine whether there is legal justification for the establishment, continuation or modification of programs designed to promote the full and fair participation of MWBEs, minorities and women in government contracting. The 2023 Disparity Study must achieve three primary objectives. First, the Study must determine the extent to which there exists a disparity between the availability of (1) qualified MWBEs; (2) minorities and women in the workforce; and (3) businesses owned by an Indian nation or tribe, minorities and women; and each of their actual utilization by State agencies and State public authorities (collectively, “State agencies”), a list of which can be found in Appendix A, for State Contracts as defined in 5 NYCRR § 140.1 (kk) (“State Contracts”). Second, the Study must provide the basis for determining whether such State Contracts should be subject to race and/or gender conscious remedial programs supported by State law. Third, the Study must establish the basis by which the State will determine overall statewide goals for the participation of MWBEs, minorities and women in State Contracts.

For the purpose of these objectives, the Selected Respondent shall be guided in its work by the parameters set forth by the United States Supreme Court in the cases of *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) (“*Croson*”), and *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995) (“*Adarand*”) and any other decisions that bear on the rights and abilities of state governments to implement race and gender conscious preference programs. The Court applies an exacting “strict scrutiny” test that requires the Disparity Study to provide historical and statistical evidence of prior discrimination by governmental units in order to support a race and gender-based plan for contracting work. Such findings provide the State a “compelling interest” in establishing goals for increasing MWBE participation in State contracting. Importantly, the continuing success of the State’s remedial programs requires that they not only be carefully justified, but also meticulously applied such that preferential treatment based on race and gender is determinative in only those very narrow circumstances in which it is truly relevant.

To that end, the Selected Respondent should reference and be conversant with New York State Executive Law Article 15-A, “Participation By Minority Group Members and Women with Respect to State Contracts,” the

2016 Disparity Study and current State MWBE program practices and policies, as set forth in Chapter XIV of 5 NYCRR, Parts 140-147.

Background

In 1988, the Legislature of the State of New York enacted Executive Law Article 15-A to further the State's policies promoting equal opportunity in employment for all persons through the creation of effective programs designed to eradicate those barriers that have unreasonably impaired the access of MWBEs to State contracting opportunities.

The State of Minority and Women-Owned Business Enterprise: Evidence from New York, published April 29, 2010, commonly referred to as the “2010 Disparity Study,” found large, adverse, and statistically significant disparities between the availability of MWBEs and their participation in the State's contracting activities. The 2010 Disparity Study further concluded that these disparities between MWBEs and non-MWBEs could not be explained solely, or even mostly, by factors untainted by discrimination. These differences, therefore, gave rise to a strong inference of the presence of discrimination.

The 2010 Business Diversification Act was passed to redress this discrimination regarding State Contracts through the statewide MWBE program, and the 2010 Disparity Study was produced to provide the legal basis for the Act.

In late 2010, the Business Diversification Act (“BDA”), which amended provisions of Article 15-A of the Executive Law, was signed into law. The primary purpose of the BDA was to further promote the participation of MWBEs ready, willing and able to perform on State procurement contracts. In addition to that overarching goal, the BDA mandated changes to the program, including eligibility requirements, to ensure that the statewide program would be effective, enforceable and constitutionally sound, and required the study of workforce diversity in employment opportunities that have resulted from State contracting.

The State of New York 2016 MWBE Disparity Study, published June 2017 (the “2016 Disparity Study”) found that, although MWBE participation in State contracting had increased significantly since the 2010 Disparity Study, MWBE utilization remained disproportionately lower than MWBE availability in every category/industry of State contracting. Disparities were found to be greatest in the State’s market for prime contractors; particularly for MWBE prime contractors providing construction-related services, such as architects and engineers.

On July 15, 2019, former New York State Governor Andrew Cuomo signed into law the expanded reauthorization of Article 15-A of the Executive Law. The reauthorization of Article 15-A extended and expanded the MWBE program to ensure the ongoing and meaningful participation of New York State MWBEs in the economic growth of the State. Specifically, the reauthorization of Article 15-A increased the MWBE personal net worth (“PNW”) certification threshold requirement and provided the Executive Director of the Division of Minority and Women-owned Business Development (the “Division” or “DMWBD”) the authority to establish additional PNW requirements for MWBE certification on an industry-by-industry basis, as well as created a Workforce Diversity Program with regional aspirational goals for the employment of minority group members and women on State construction projects (see Sections 311 and 312). As per the reauthorized Article 15-A, the DMWBD has been authorized and directed to recommission a new Disparity Study regarding the participation of MWBEs in State Contracts, to be delivered to the Governor and the Legislature no later than August 15, 2023.

MWBE & SDVOB Subcontractor Interest

New York State certified MWBEs and Service-Disabled Veteran Owned Businesses (SDVOBs) may request that their firm's contact information be included on a list of MWBE and SDVOB firms interested in serving as a subcontractor for this procurement. The listing will be publicly posted on ESD's website for reference by the bidding community. A firm requesting inclusion on this list should send contact information and a copy of its NYS MWBE or SDVOB certification to 2023MWBEDISPARITY@esd.ny.gov. Nothing prohibits an MWBE Vendor or SDVOB Vendor from proposing as a prime contractor.

III. DEFINITIONS

Please reference the New York State Executive Law Article 15-A and Parts 140-147 of Title 5 of the New York Codes, Rules and Regulations for definitions related to this RFP.

IV. SCOPE OF WORK

ESD is seeking a qualified Bidder to conduct a statewide disparity study and policy review with defined deliverables regarding the following:

1. Business Study

For the Business Study (Part 1), the Selected Respondent shall assess the use of qualified MWBEs and businesses owned by Indian nation or tribe as contractors and subcontractors by the State for (1) construction; (2) construction-related services ("CRS"); (3) non construction-related services, including but not limited to clean/green energy, cannabis, real estate development and technology; and (4) commodities, against availability.

2. Workforce Study

For the Workforce Study (Part 2) the Selected Respondent shall assess the level of employment of qualified minorities and women by State contractors, subcontractors, and vendors, who receive State non-construction-related services and commodities contracts, against availability.

3. Policy Review

The Selected Respondent will conduct a review of best practices, Policy Review (Part 3), along with a review of race and gender conscious remedial programmatic tools in other states and large municipalities that may be relevant to the New York State framework.

A. Data Collection

In the analysis, the successful Bidder shall, without limitation, take into consideration the following documentation and information:

- a. Article 15-A and the related regulations;
- b. Article 28 – Workforce Diversity Program;
- c. Data from the 2016 Disparity Study;
- d. Data from the Mason Tillman Personal Net Worth and Workforce Diversity Study to be completed in 2022; and

- e. Publicly available and reliable data related to workforce participation and disparities on New York State Contracts from the Federal government or New York State Agencies.

The Selected Respondent shall be solely responsible for defining, researching, compiling, and analyzing all data required to provide the services described in this RFP. ESD will, to the extent possible, make records available to the Selected Respondent and cooperate with the Selected Respondent in the retrieval of the records. The records may be available in various formats including the Internet, computer databases, spreadsheets, and physical copies. Where ESD does not provide the Selected Respondent with data, the Selected Respondent must research and gather such data, and must set forth the methods and sources by and from which the data was collected, and the steps taken to ensure data integrity. The Selected Respondent may use statistically valid sampling and estimating methods, as appropriate, where actual procurement data and records are incomplete. However, the Selected Respondent is responsible for the legal sufficiency of any such method used. Any surveys or third-party outreach to New York State Agencies and Authorities, or to any other third parties, by the Selected Respondent shall be conducted with notice to and in collaboration with DMWBD.

The following is a list and description of the data sources available from the State, anticipated needs for data, and potential sources for the required data.

1. NYS MWBE & Businesses Owned by an Indian Nation or Tribe Spending/Utilization Data

ESD will provide the Selected Respondent with electronic files from the [State Financial System](#) (“SFS”), [Public Authorities Reporting Information System](#) (“PARIS”), [New York State Contracting System](#) (“NYSCS”) for payment transactions included in the scope of this Study on State Contracts procured by State Agencies and Authorities for the period from April 1, 2015, to March 31, 2021. Such data will include:

- a. Originating agency/authority
- b. Information identifying the contractor
- c. Contract specifications (*i.e.*, start date, end date, expended amounts, purpose)
- d. To the extent possible, subcontracting information
- e. To the extent possible, workforce assigned to the project, broken down by gender, race, and EEO category

2. NYS MWBE & Businesses Owned by an Indian Nation or Tribe Availability Data

The Selected Respondent shall research the existence of MWBEs and businesses owned by an Indian Nation or Tribe within the State’s relevant market area as a whole and within the various regions of the State. In addition to the State’s Directory of New York State Certified MWBEs (<https://ny.newnycontracts.com/>), the Selected Respondent shall research, review, and include, as appropriate, information from public and private registries of MWBEs and businesses owned by an Indian Nation or Tribe, business or industry groups, listings of federally and locally certified MWBEs, the New York Department of State database of active incorporations, etc. Furthermore, the Selected Respondent shall also obtain and analyze relevant data sources, such as U.S. census data, and shall demonstrate that it has employed valid statistical sampling in order to accurately ascertain the number of MWBEs and businesses owned by an Indian Nation or Tribe in the State’s relevant market area.

3. NYS Workforce Utilization Data

Where available, ESD will provide the Selected Respondent with workforce utilization data from State agencies in physical or electronic formats from SFS, NYSCS and other state records management systems for the period from April 1, 2015, to March 31, 2021.

Such data will include:

- a. Originating agency/authority
- b. Information identifying the contractor
- c. Contract specifications (start date, end date, expended amounts, purpose)
- d. To the limited extent possible, subcontract information
- e. To the limited extent possible, workforce assigned to the project, broken down by gender, race, and EEO category

4. NYS Workforce Availability Data

The Selected Respondent shall research the existence of qualified minorities and women within the State's relevant market area as a whole and within the various regions of the State. The Selected Respondent shall research, review, and include as appropriate information from sources including, but not limited to the New York Department of Labor, workforce or industry groups, federal and local workforce data, etc. Furthermore, the Selected Respondent shall obtain and analyze relevant data sources, such as U.S. Census data, and shall demonstrate that it has employed valid statistical sampling to accurately ascertain the number of minorities and women in the State's relevant market area.

B. Disparity Analysis

In determining whether any disparity exists for Part 1 or Part 2 of the Study, Selected Respondent shall (i) define and calculate availability; (ii) segment the utilization analysis by region (See Appendix B) and by dollar amount of State contract, or other appropriate metrics; and (iii) conduct appropriate statistical or econometric analysis of the utilization data to determine the extent, if any, of the disparities.

1. Availability

a. Business Study (Part 1)

The Selected Respondent shall define and quantify the availability of qualified MWBEs and businesses owned by an Indian nation or tribe in each of the relevant market sectors (construction, CRS, non construction-related services, and commodities), subsectors (by North American Industry Classification System ("NAICS") codes) and regions of the State. MWBE analysis should include break downs by race and ethnic groups and gender. The analysis of businesses owned by an Indian nation or tribe should include a breakdown by Indian nation or tribe and gender. In analyzing availability, the Selected Respondent shall:

- i. Define qualified and available MWBEs and businesses owned by an Indian nation or tribe for each market sector (construction, CRS, non construction-related services and commodities) and region of the State;
- ii. Collect and provide data on MWBEs and businesses owned by an Indian nation or tribe by region and market sector that includes an assessment of information pertaining to business and professional capacity to perform on State Contracts, broken down by gender and minority group member status of owners of firms. Data shall include relevant information impacting capacity such as gross

- revenues, total annual receipts, total employees, years of experience, required licensure or other uniform and relevant measures;
- iii. For each region of the State and within the relevant market sector(s), develop a business demographics profile showing the number of qualified, available (a) businesses specifically owned by an Indian nation or tribe; (b) firms owned by non-minorities, women, minorities (broken down by minority group); and (c) non-minorities, women, and minority women (broken down by minority group), with the percentage of the total number of firms that each group represents.
- b. Workforce Study (Part 2)

The Selected Respondent shall define, quantify and explain the availability of qualified minority group members and women in each of the relevant market sectors (non construction-related services and commodities), subsectors (by NAICS codes) and regions of the State. MWBE analysis should include breakdowns by race and ethnic groups and gender. In analyzing availability, the Selected Respondent shall:

- i. Determine and report on the criteria used to define qualified and available minority group members and women for each of the market sectors (non construction-related services and commodities) and regions of the State;
- ii. Collect and provide data on minority group members and women by region and market sector that includes an assessment of information pertaining to business and professional capacity to perform on State Contracts and serve on management level bodies, including boards of directors, and as senior executive officers within contracting entities, broken down by gender and minority group member status of owners of firms. Workforce data shall include information impacting workers' ability to perform on State Contracts and serve on management level bodies, including boards of directors, and as senior executive officers within contracting entities including, where appropriate, skill and training levels, experience, and necessary licensures and certifications.
- iii. For each region of the State and within the relevant market sectors, develop a workforce demographics profile showing the number of qualified, available minorities and women that are ready, willing and able to perform on State Contracts and serve on management level bodies, including boards of directors, and as senior executive officers within contracting entities, with the percentage of the total number of persons that group represents in the overall workforce.

2. Utilization

- a. Business Study (Part 1) – Selected Respondent shall provide:
- i. List of MWBEs and businesses owned by an Indian nation or tribe (as either primes or subs) that were actually utilized on State Contracts;
 - ii. Total State Contracts awarded to MWBE firms and businesses owned by an Indian nation or tribe broken down by prime contacts and subcontracts;
 - iii. Total dollars paid to MWBE firms and businesses owned by an Indian nation or tribe broken down by prime contacts and subcontracts; and

- iv. Total number of MWBEs and businesses owned by an Indian nation or tribe that were actually utilized on State Contracts broken down into to primes and subs.
- b. Workforce Study (Part 2)

The Selected Respondent shall analyze the Workforce Utilization. Relative to State Contracts, the utilization analysis must describe percentages of:

- i. minority group members and women actually utilized by State contractors as staff or laborers on State Contracts;
- ii. minority group members and women who actually served on management-level bodies, including boards of directors, and as senior executive officers within contracting entities;
- iii. total State Contracts minority group members and women worked on as staff or laborers; and
- iv. total State Contracts where minority group members and women served on management-level bodies, including boards of directors, and as senior executive officers within contracting entities.

Selected Respondent shall also provide:

- i. total value of State Contracts where minority group members and women worked as staff or laborers; and
- ii. total value of State Contracts where minority group members and women served on management level bodies, including boards of directors, and as senior executive officers within contracting entities.

3. Disparity

a. Business Study (Part 1)

In determining whether any disparity exists between the number of qualified MWBEs and Indian nation or tribe owned businesses that are ready, willing and able (*i.e.* available) to perform State Contracts for construction, CRS, non construction-related services and commodities in the various regions of the State, and the number of such MWBEs and Indian nation or tribe owned businesses actually engaged to perform such contracts – and to the extent possible, subcontracts – the Selected Respondent shall (a) define and calculate MWBE availability; (b) segment the utilization analysis by region and by dollar amount of State contract, or other appropriate metrics; and (c) conduct relevant statistical or econometric analysis of the utilization data to determine the extent, if any, of the disparity.

b. The Selected Respondent shall fully define “statistically significant disparity” for the purposes of its analysis, and explain the rationale underlying its definition. In assessing any statistical disparity in utilization rates, the Selected Respondent shall employ appropriate statistical methodologies to control for any relevant non-MWBE-related characteristics or criteria that might affect the disparity analysis, explain any such criteria it considers, and describe the statistical analysis it utilizes. If a disparity exists between the availability of Indian nation or tribe owned businesses to participate on State agency contracts and utilization, the Selected Respondent must demonstrate the feasibility of authorizing Indian nation or tribe owned businesses to become certified as a participant in the MWBE program. [Workforce Study (Part 2)]

In determining whether any disparity exists between the number of qualified minority group members and

women that are ready, willing and able (*i.e.* available) to perform State Contracts for non construction-related services and commodities in the various regions of the State, and the number of such minority group members and women actually engaged to perform such contracts – and to the extent possible, subcontracts – the Selected Respondent shall (a) define and calculate the availability of qualified minority group members and women; (b) segment the utilization analysis by region and by dollar amount of State contract, or other appropriate metrics; and (c) conduct appropriate statistical or econometric analysis of the utilization data to determine the extent, if any, of the disparity.

In determining whether any disparity exists between the number of qualified minority group members and women that are ready, willing and able (*i.e.* available) to serve on management-level bodies, including boards of directors, and as senior executive officers within contracting entities for non construction-related services and commodities in the various regions of the State, and the number of such minority group members and women actually engaged to serve on management-level bodies, including boards of directors, and as senior executive officers within contracting entities – and to the extent possible, subcontracts – the Selected Respondent shall (a) define and calculate qualified minority group members and women availability; (b) segment the utilization analysis by region and by dollar amount of State contract, or other appropriate metrics; and (c) conduct appropriate statistical or econometric analysis of the utilization data to determine the extent, if any, of the disparity.

The Selected Respondent shall fully define “statistically significant disparity” for the purposes of its analysis and explain the rationale underlying its definition. In assessing any statistical disparity in utilization rates, the Selected Respondent shall employ appropriate statistical methodologies to control for any relevant non-minority group members and women-related characteristics or criteria that might affect the disparity analysis, and the Selected Respondent shall identify and explain any such criteria it considers and the statistical analysis it utilizes.

C. Policy Study Components

Policy Review

ESD seeks information outlining the use and efficacy of race and gender conscious remedial programmatic tools in other states and large municipalities that might be instructive to New York State practitioners and policymakers as they craft policies, programs and procedures designed to remedy utilization disparities in State contracting. *Croson* and its progeny should guide Selected Respondent’s assessment of such programs.

V. DELIVERABLES

A. General Deliverables Requirements

All deliverables shall be subject to the following requirements:

1. The Selected Respondent will be required to prepare and submit the documents, identified below, to ESD both in physical copy and an encrypted electronic format compatible with Microsoft software with complete tabular findings. ESD shall have access upon request to all data, information, and analyses generated during the Study. The Selected Respondent shall make such requested data, information and analyses available to ESD promptly and in the requested format, following a request by ESD.
2. All reports shall be: (a) written in clear and concise language using consistent terms; (b) organized in a

logical manner; (c) fully illustrated with relevant examples; and (d) consistent with widely accepted, analytically sound and legally defensible methodology and reasoning. The Selected Respondent shall provide to ESD all notes, work papers, records and documentation that identify, describe, detail, chronicle, and support its methods, analyses and conclusions for each of the elements in the work product. Should the Selected Respondent develop a computerized database during the work, the Selected Respondent shall provide the database to ESD. Programs and data entry materials developed in connection with the Study must be compatible with Microsoft compatible software. The final version of any report or portion of the report must address any deficiencies or concerns raised by ESD in any previous drafts.

3. For any requirement under the contract, the Selected Respondent shall provide any information, data or documents establishing its legal defensibility if requested by ESD; and the Selected Respondent shall agree to be available to provide information, assistance or consultation if the study is challenged in a legal proceeding in any court. At the end of the engagement, a complete copy of all the data, information and records that are relied upon or used by the Selected Respondent for its study methodology, analysis, and conclusions, must be provided to the Division at no cost.
4. The Selected Respondent agrees to maintain, for a six-year period following the conclusion of the engagement, all data, information and records used, acquired or generated during the engagement using sound and legally defensible document and information retention policies. The Selected Respondent further agrees that during the six-year period following the conclusion of this engagement, it will provide any documents, information, records, or Data to ESD upon their request and within 5 (five) business days of the Selected Respondent receiving such a request.

B. Monthly Progress Reports

DMWBD requires bi-weekly progress reports that describe tasks undertaken and the portion of each task that has been completed by the reporting date, as well as the tasks scheduled to be undertaken in the following weeks. These reports must also identify any issues encountered that might impact the work schedule or the completion of tasks, and the steps taken by the Selected Respondent to resolve those issues. Any revisions to the work plan must be included in these progress reports.

C. Disparity Study Report

1. Business Study Component (Part 1)

- a. The Disparity Study Report shall address each of the relevant requirements of Section IV. above, including:

- i. Data Collection
- ii. Availability Study
- iii. Utilization Analysis
- iv. Statistical Disparity

- b. Selected Respondent shall provide a database of qualified MWBE and non-MWBE firms, including businesses owned by an Indian nation or tribe, in each region of the State available to perform State Contracts for construction, CRS, non construction-related services, and commodities. The database must include a description of the primary business of the firm identified by NAICS codes, the firm

owner's gender, ethnicity, the size of the firm based on gross revenue, region of the State, and dollar value paid to each contracting entity for work on State Contracts during the Study period. A copy of the database is to be provided to ESD in an electronic format compatible with Microsoft software.

c. Furthermore, Selected Respondent shall provide statistically significant availability, utilization, and disparity data that is customized (or customizable) to individual State Agencies' contracting activity in order to provide individual Agencies with goal setting tools.

d. If a disparity exists between the availability of businesses owned by an Indian nation or tribe to participate on State Contracts and utilization, the Selected Respondent must demonstrate the feasibility of authorizing Indian nation or tribe owned businesses to become certified as a participant in the minority and women-owned business enterprise program.

2. Workforce Study Component (Part 2)

a. Workforce Component (Part 2) of the Disparity Study Report shall address each of the requirements of Section IV above. This shall include:

- i. Data Collection
- ii. Availability Study
- iii. Utilization Analysis
- iv. Statistical Disparity

b. Selected Respondent shall provide data on the number of qualified minority group members and women that are ready, willing and able (*i.e.* available) to provide labor on State Contracts for non construction-related services and commodities and the number of such minority group members and women actually engaged to perform such contracts, and to the extent possible, subcontracts. The data shall include dollar value paid to each contracting entity for work on State Contracts during the Study period along with the size of the firm based on gross revenue and region of the State. The data must be organized by industry using NAICS codes and identify relevant factors, such as education level, experience, region of the State, etc. that will enable the State to ascertain the degree to which a disparity exists between those minorities and women within the relevant marketplace that are ready, willing and able to perform work on State Contracts as compared with those minorities and women that are actually providing labor on State-funded contracts.

c. Selected Respondent shall provide data on the number of qualified minority group members and women that are ready, willing and able (*i.e.* available) to serve on management level bodies, including boards of directors, and as senior executive officers within contracting entities for non construction-related services and commodities and the number of such minority group members and women actually engaged to serve on management level bodies, including boards of directors, and as senior executive officers within contracting entities for construction, CRS, non construction-related services and commodities and to the extent possible, subcontracts. The data shall include dollar value paid to each contracting entity for work on State Contracts during the Study period along with the size of the firm based on gross revenue and region of the State. The data must be organized by industry using NAICS codes and identify relevant factors, such as education level, experience, geography, etc. that

will enable the State to ascertain the degree to which a disparity exists between those minorities and women within the relevant marketplace that are ready, willing and able to serve on management-level bodies, including boards of directors, and as senior executive officers within contracting entities for non construction-related services and commodities as compared with those minorities and women who served on management-level bodies, including boards of directors, and as senior executive officers within contracting entities for non construction-related services and commodities.

D. Policy Analysis

The policy review shall provide information concerning policy recommendations based on Selected Respondent's understanding of effective tools designed to remediate disparities in MWBE participation as contractors and minorities and women performing on government contracts. This assessment should include recommended best practices information around legality of policies, such as contract goals, set-asides, mentor-protégé programs, and price preferences.

E. Study Findings

All findings and recommendations, as described in Section 4 (Scope of Services), shall be provided in clear and concise language to DMWBD by the dates delineated in Section 5.4 (schedule of deliverables). This shall include all necessary reasoning, analyses and data to support the methodologies and recommendations.

E. Schedule of Deliverables (not including bi-monthly reporting)

<u>Deliverable Name</u>	<u>Date Due</u>
Draft Disparity Study Report	No later than May 2, 2023
Final Disparity Study Report	No later than July 1, 2023
Draft Policy Analysis	No later than May 2, 2023
Final Policy Analysis	No later than July 1, 2023

VI. SCHEDULE OF RFP RELATED DATES

It is anticipated that a contract will be awarded in response to this RFP based on the following estimated schedule:

Release of RFP	April 7, 2022
Deadline for Submission of Questions	April 14, 2022 by 5:00 PM EST
Deadline for ESD to Respond to Questions	April 20, 2022 by 5:00 PM EST
Submission of Proposals (date and time)	April 28, 2022 by 5:00 PM EST
Interviews (if necessary)	May 5, - May 9, 2022
Announcement of Successful Bidder	May 13, 2022
Anticipated Contract Start Date	May 30, 2022

Please note that the Corporation reserves the right to change any of the dates stated in this RFP.

VII. SELECTION CRITERIA

Minimum Qualification Requirements:

Responses to this RFP must include information about Bidder's current capabilities, past experiences working with other states and large municipalities and how those experiences may inform or impact work with New York State as it relates to operating models, leading practices, and policy improvements.

- a) Prior to the proposal due date for this RFP, the Respondent must have been in business for a minimum of five (5) years, performing relevant quantitative analyses, such as those described in Scope of Work of this RFP.
- b) Each Bidder must provide the names and addresses of at least three (3) business references.
- c) Prospective Bidders must possess adequate financial resources and organizational capacity to perform the services described in this RFP in an efficient and effective manner, with financial resources to pay expenses in advance of receipt of payment from ESD. ESD prefers a letter from a Certified Public Accountant (CPA) indicating that the Bidder has sufficient working capital, positive net worth, and has or can obtain a line of credit. ESD will also accept a letter from a party other than a CPA (such as an attorney, bank officer, corporate attorney, parent holding company) familiar with and attesting to the financial condition of the Bidder.
- d) The successful Bidder must employ strict privacy and confidentiality protections to adequately protect the confidentiality of all data. All data transmissions must be encrypted. Throughout the course of this project, the successful Bidder may have access to confidential company information. The successful Bidder for this project must agree to protect confidential information and to sign non-disclosure agreements prepared by ESD. All information provided to, collected or otherwise obtained by the successful Bidder, the successful Bidder's staff and all subcontractors is proprietary and may not be disclosed in perpetuity, to any party other than ESD itself without ESD's express written approval.
- e) This section of the RFP is not intended to itemize all requirements for award of this project. *See* Section 8 of this RFP for additional information on proposal format and contents.

The proposals will be scored in the following manner:

Firm Experience and Qualifications	20 Percent (20%)
Staff Experience and Qualifications	15 Percent (15%)
Project Plan and Approach/ Methodology	30 Percent (30%)
Cost Proposal and Budget/ Use of Funds	15 Percent (15%)
First-time ESD MWBE Disparity Study Prime Contractor	10 Percent (10%)
Quantitative Factor	10 Percent (10%)

Quantitative Factor (10 pts)

ESD will award 10 points to respondents that are certified Minority or Women-owned Business Enterprises (MWBEs) as defined in section three hundred ten of the New York State Executive Law or Service-Disabled Veteran-owned Business Enterprises ("SDVOBs") as defined in section three hundred sixty-nine-h of the New York State Executive Law.

In order to be awarded points pursuant to the Quantitative Factor, the respondent must (1) identify itself as an MWBE or SDVOB in Appendix C and (2) be registered with the NYS Department of State as an entity authorized to conduct business in New York State. Respondents identifying themselves as MWBEs must be listed in the directory of New York State-certified MWBEs ("MWBE Directory") as of the closing of the period for responses to this RFP. The MWBE Directory is available at: <https://ny.newnycontracts.com/>. Respondents identifying themselves as SDVOBs must be listed in the directory of New York State-certified SDVOBs ("SDVOB Directory") as of the closing of the period for responses to this RFP. The SDVOB Directory is available <http://www.ogs.ny.gov/Core/SDVOBA.asp>.

VIII. SUBMISSION OF PROPOSALS

Every Respondent to this RFP should submit a proposal which clearly and concisely provides all the information requested. Respondents should ensure that responses conform to the RFP instructions and requirements and are complete and clear in meeting the technical requirements. Respondents are advised to thoroughly read and follow all instructions contained in this RFP. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive.

i. Technical Proposal

Below is a listing of the technical information to be provided. No information is required beyond what is specifically requested. ESD requests that all sections of the Technical Proposals be identified to match the specific information requested below:

- A. Title Page
- B. Table of Contents
- C. Firm Experience and Qualifications
- D. Staff Experience and Qualifications
- E. Project Plan and Approach
- F. Estimated Cost
- G. Quantitative Factors

The purpose of the Technical Proposal is to provide Bidders with an opportunity to demonstrate their qualifications, competence, and capacity to undertake the engagement described herein, in a manner which complies with both applicable laws and regulations and the RFP requirements.

A. Title Page

Indicate name, address, phone and email address, contact person, and federal tax ID number (if applicable). A statement that the offer shall be firm and not revocable for a period of 90 days must also be included.

B. Table of Contents

The Table of Contents should clearly identify the location of all material within the proposal by section and page number.

C. Firm Experience and Qualifications

In this section of the Technical Proposal, Bidders should demonstrate relevant experience by providing the following:

1. A summary of the Bidder's technical expertise that describes the unique capabilities of the Bidder. This narrative should highlight the Bidder's ability to provide successful prior experience conducting similar analyses or analogous studies and include a description of the direct prior experience of the Bidder with New York State and/or other comparable governmental entities relating to disparity and policy analyses.
2. Successful Bidders should detail at least one similar engagement comparable to those services detailed in Section 4, but no more than three. Please indicate, for each engagement completed:
 - a. Name of client organization
 - b. Type of client (e.g. government entity (local, state, federal), private company etc.)
 - c. Project description and services provided
 - d. Project duration including start/end dates

- e. Number of Bidder staff (FTEs) involved in the engagement
3. Any other information regarding the project that would assist ESD in determining the success experienced by the client, which may include previous similar studies. If Respondent wishes to include previous studies as examples of prior experience, please include a link to the study and not a hard copy in the proposal.
4. Firm References - The Bidder is asked to supply ESD with the names and contact information for two individuals (one primary and one alternate contact person) whom ESD may contact as a reference for each engagement described above.
5. Litigation experience – the Bidder is asked to provide a summary of prior experience serving as testifying and non-testifying expert witnesses in cases involving any disparity studies or challenges to race and gender-based affirmative action programs.

Information provided by references may be used by the Corporation for proposal evaluation purposes. The Corporation may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Bidder to the client during the engagement. The Corporation reserves the right to deploy, at its sole discretion, a variety of methods and communication approaches to contact references, depending on what the Corporation deems to be the most effective and efficient manner.

D. Staff Experience and Qualifications

In this section of the Technical Proposal, Bidders should demonstrate that the staff proposed have the knowledge and ability to perform the services described in this RFP and provide the following:

1. A project management and staffing plan that describes the unique capabilities of the individuals assigned. Include a narrative description of the specific function/role that each staff member would perform and their specific qualifications for their proposed role in this engagement. Lead staff should be identified. Respondents should submit resumes for all members of the proposed team, including any subcontract personnel who may work on the engagement.
2. State all relevant information regarding the number, qualifications and experience of the staff to be specifically assigned to this engagement. Indicate how the staff competency level over the term of the contract will be assured.
3. Respondents should submit the contact information for at least three (3) references from recent engagements, preferably with governmental entities, who can comment on the experience of the lead staff proposed for this engagement. Names, titles, addresses, email addresses and telephone numbers of organizations and individuals who may be contacted for reference must be included.

Information provided by references may be used for proposal evaluation purposes. The Corporation may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Bidder to the client during the engagement.

E. Project Plan / Approach

In this section of the Technical Proposal, Bidders should demonstrate their competence and capacity to undertake the services described in this RFP by providing the following:

Proposals must include a workplan detailing the proposed research designs, indicating the techniques and methodologies planned to meet the objectives of the RFP's scope of services, as well as tasks, activities, data-gathering, analyses, milestones, and other information describing how the Bidder will complete and meet the goals of the projects. A successful Bidder must demonstrate clear understanding of the research questions, the relevant data, and the analysis required for the submission of the reports. In addition, the work plan must identify any assumptions, qualitative and quantitative data, procedures, and models that will be gathered and analyzed to test any such assumptions. A successful Bidder shall meet the prescribed deliverables in accordance with the workplan included in its proposal.

Responsive proposals should discuss the Bidder's proposed methodology for gathering the required data and how it would ensure the statistical significance of the analysis for the purposes described in Section 4. Where ESD does not provide the Bidder with required information, the Bidder must research and gather such data, and must set forth the methods and sources by and from which the data is to be collected and must describe the means by which data integrity will be established. The workplan should also discuss any significant hurdles or challenges that the Bidder anticipates will impede the success of the project, including any gaps in the data that the Bidder anticipates. For each challenge identified, a Bidder should discuss how they would mitigate those risks.

The workplan should also include a timeline for the tasks to be completed in order to ensure the Schedule of Deliverables is met.

A successful Bidder will identify the resources it plans to utilize to complete the studies, including subcontractors if any, external data, software packages, and other anticipated resources.

F. Estimated Cost

All Bidders must complete and submit with their proposal a budget, which shall include the cost of performing the tasks outlined herein. The budget shall be separate from the technical proposal. The proposal must include a description of each of the following:

1. Staff Fees including the title of each individual assigned to the project;
2. hourly rate per individual assigned to the project; and
3. estimated number of hours for each individual assigned to the project.
4. Expenses
 - (a) administrative expenses including costs related to such items as photocopying, telecommunications, travel, data analysis, data storage, interviewing, etc. Note: travel expenses will be reimbursed at the current rates for New York State employees;
 - (b) any other expenses (e.g. subcontracted services) identified by type and dollar amount. Note: Subcontracted services must be itemized by subcontract name, job title, hours, hourly rate and total.

ii. Administrative Proposal

Schedule A , https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf, are required terms must be included in every contract executed with ESD pursuant to this RFP. The Selected Respondent must agree to abide by these requirements and provide any information requested by ESD in connection with these requirements. Accordingly, Bidders should complete and submit the items listed below, in the order in which they are listed. Failure to submit any of the requirements below with the proposal may result in the rejection of a Bidder's proposal.

- i. [State Finance Law §§139-j and 139-k forms http://intranet.empire.internal/Finance/SF_Law139_JK.pdf](http://intranet.empire.internal/Finance/SF_Law139_JK.pdf)
- ii. [Vendor Responsibility Questionnaire](#), (may also be submitted online with a copy of submitted form with proposal)

- iii. Iran Divestment Act Statement
- iv. Non-Discrimination and Contractor & Supplier Diversity Requirements
 - o [OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement](#)
 - o [OCSD-2 - Staffing Plan](#)
 - o [OCSD-4 - MWBE and SDVOB Utilization Plan](#)
- v. [Encouraging the Use of NYS Businesses in Contract Performance Form.](#)
- vi. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#), submit with proposal
- vii. [W-9 Form](#), submit with proposal

Additional information about these items, and ESD's procurement requirements, can be found in Section IX of this RFP ("Procurement Forms and Requirements").

Submission of a Complete Two-Part Proposal

By submitting a proposal, Respondents are indicating their acceptance of the conditions in this RFP. Submission of proposals in a manner other than as described in these instructions (e.g., facsimile, physical mail) will not be accepted. When submitting each proposal, Bidders must comply with the following:

1. The Technical Proposal and the Administrative Proposal must be submitted in one email as separate files;
2. Clearly mark the files for each proposal (Technical and Administrative);
3. Clearly mark the email as "**RFP – 2023 MWBE Disparity Study Proposal submitted by [Bidder's name]**"

Digital files must be received prior to 5:00 p.m. local time on April 28, 2022 at the following electronic mail (email) address: 2023MWBEDISPARITY@esd.ny.gov. Proposals should not be sent to any physical address:

Late proposals will not be considered absent extraordinary circumstances where good cause is shown.

IX. QUESTIONS

Questions or requests for clarification regarding the RFP should be submitted via email, citing the RFP page and section in accordance with the schedule in Section VI (Schedule of Dates) to 2023MWBEDISPARITY@esd.ny.gov. Oral questions will not be accepted and any question received after the deadline may not be answered. The comprehensive list of questions/requests for clarifications and the official responses will be posted with this RFP.

X. GENERAL PROVISIONS

The issuance of this RFP and the submission of a response by a Respondent or the acceptance of such a response by ESD does not obligate ESD in any manner. ESD reserves the right to:

- i. amend, modify or withdraw this RFP;
- ii. revise any requirement of this RFP;
- iii. require supplemental statements or information from any Respondent;
- iv. accept or reject any or all responses hereto;
- v. extend the deadline for submission of responses hereto;
- vi. negotiate potential contract terms with any Bidder;
- vii. communicate with any Bidder to correct and/or clarify responses that do not conform to the instructions contained herein;
- viii. cancel, or reissue in whole or in part, this RFP, if ESD determines in its sole discretion that it is its best interest to do so; and

- ix. extend the term of any agreement on terms consistent with this RFP.

ESD may exercise the foregoing rights at any time without notice and without liability to any Respondent or any other party for its expenses incurred in preparation of responses hereto or otherwise. All costs associated with responding to this RFP will be at the sole cost and expense of the Bidder.

All information submitted in response to this RFP is subject to the Freedom of Information Law (“FOIL”) (N.Y. Public Officers Law, Article 6), which generally mandates the disclosure of documents in the possession of ESD upon the request of any person unless the content of the document falls under a specific exemption to disclosure. In addition, Proposals may be discussed at meetings of the ESD Directors, which meetings are subject to the Open Meetings Law (N.Y. Public Officers Law, Article 7).

ESD reserves the right, in its sole discretion, to retain and use all the materials and information, and the ideas and suggestions therein, submitted in response to this solicitation (collectively, the “Response Information”) for any purpose. By submitting a Proposal, each Respondent waives any and all claims against ESD relating to ESD’s retention or use of the Response Information.

Required Approvals

The awarded contract, if any, may be subject to review and approval by the Office of the State Comptroller (“OSC”) pursuant to Public Authorities Law §2879-a and the regulations issued thereunder. Such OSC review and approval may be required of contracts with a value in excess of one million dollars, or modifications to contracts that result in an aggregate value in excess of one million dollars, where such contracts are paid in whole or in part with monies appropriated by the State, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). If the awarded contract is subject to OSC review and approval, the contract shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with the contract, unless and until OSC approval has been received.

Performance

The performance of a contractor (“Contractor”) on any contract resulting from this procurement will be assessed by the Corporation according to the achievement of the Contractor’s contractual obligations in a timely and professional manner, as set forth in the resulting Contract. The Corporation will utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work products.

Contractor warrants that its services shall be performed in accordance with applicable professional standards and that the Contractor shall correct, at no charge to the Corporation, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.

Additional Services Requested

The Corporation may, at any time, by written notice, make changes or additions to work or services within the general scope of the contract resulting from this RFP (not to include professional services requiring licenses or specialized expertise such as engineering, architectural, and environmental consulting, abatement, treatment, and testing work) for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of the contract, an equitable adjustment may be made in the price using the billing rates set forth in the contract, and the Contractor shall be notified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be

asserted within 30 days from the date of receipt by the Contractor of the notification of change; provided, however, that the Corporation, if it decides that the facts justify such action, may receive and act upon such claim as asserted at any time. Nothing in this clause shall excuse the Contractor from proceeding with this contract as modified.

Contractor Staff

Contractor staff assigned to work on this project shall be subject to approval by the Corporation. It is highly desirable that staff assigned to work on this project continue to work on this project until completion. The Contractor should notify the Corporation of any proposed changes in staff immediately. The Corporation has the absolute right and discretion to approve or disapprove any proposed changes in staff. The Corporation, in each instance, will be provided with a summary of experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld.

The Contractor specifically represents and agrees that its members, officers, employees, agents, servants, consultants, shareholders, and subcontractors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties performed hereunder.

The Agreement resulting from this RFP is intended to secure the professional services of the Contractor because of its ability and shall not be assigned, conveyed, transferred, or disposed of by the Contractor.

The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the State Project Manager. Approval shall not be unreasonably withheld upon receipt of written request to subcontract. All employees of the Contractor, or of its subcontractors, who shall perform Services under this contract, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services on behalf of Contractor under the Agreement resulting from this RFP shall, in performing such Services, comply with all applicable Federal and State laws concerning employment in the United States.

Intellectual Property/Personal Property Rights in Data, Computer Software & Other Intellectual Property

A. Rights in Data:

All studies, reports, findings, sources, bibliographies, subscriber lists, mailing lists, working papers, files, input materials and output materials, the media upon which the same are located (including, without limitation, cards, tapes, discs, and other storage facilities), together with any drafts of same or other intermediate components thereof which may or may not be either confidential or proprietary, and all other materials, prepared for or delivered to ESD in the course of performance of any contract resulting from this RFP ("Agreement"), (hereinafter referred to as "Data"), shall be deemed to be "work made for hire" (as defined in Section 101 of Title 17 of the United States Code), and shall be provided to and become the exclusive property of ESD. If it is determined that any Data encompassed above does not fall within the definition of "work made for hire" (as defined in Section 101 of Title 17 of the U.S.C.), the Bidder hereby covenants and agrees to transfer all right, title and interest in any such Data to ESD, and cooperate with ESD, as is necessary, in the processing and execution of any and all documents needed to cause said transfer of all right, title and interest.

B. Maintaining Data:

The Bidder agrees to maintain all Data and any other documents, information and records relating to the studies that are the subject of this RFP for a period of six years after the conclusion of this engagement, at the Bidder's sole cost and expense and pursuant to reasonable and legally defensible document and information retention policies. The Bidder further agrees that during the six-year period following the conclusion of this engagement, it will provide any documents, information, records, or Data to ESD upon their request and within 5 (five) business days of the Bidder receiving such a request. For any requests for additional documentation, beyond those records that are required to be provided at the end of the engagement (see Section III), ESD agrees to pay the reasonable costs incurred by the Bidder for the copying and transmission of documents, information, records or data, as long as the Bidder provides notice of such costs to ESD prior to incurring them.

C. Rights in COTS Computer Software:

Any commercial off-the-shelf ("COTS") computer software and its related documentation and licenses which were purchased by the Bidder to perform data collection, data dissemination and marketing in satisfaction of an Agreement shall be transferred to ESD to the extent permissible by the original license. The transfer of such COTS software shall be accomplished at no additional cost to ESD.

D. Rights to Bidder-Owned Pre-Existing Computer Software/Documentation:

All computer software and related documentation, together with any versions of same or other intermediate components thereof, which may be either confidential or proprietary, which was owned by the Bidder and existing at the time of the effective date of an Agreement and which, during the term of such Agreement is used by the Bidder in the conduct of the performance of the Agreement in such a fashion as to render such preexisting software as being an integral and necessary operating component of the Bidder-Developed Computer Software developed under the Agreement (hereinafter referred to as "Bidder-Owned Pre-Existing Computer Software/Documentation"), shall be deemed to remain the property of the Bidder and all right, title and interest therein to the same shall continue to vest in the Bidder, with the express understanding that the Bidder hereby licenses ESD to use such Bidder-Owned Pre-Existing Computer Software/Documentation as provided for in subparagraph X.F. herein below.

E. Rights to Contractor-Developed Computer Software and Software Documentation:

The Bidder will design, develop and install computer software, programming or code (referred to as "software" in this section) as may be required for ESD. ESD will have exclusive ownership of the software including all documentation, source and executable code. All computer software and related documentation, together with any versions of same or other intermediate components thereof which may be either confidential or proprietary, developed by the Bidder in the direct course of performance of an Agreement (hereinafter "Bidder-Developed Computer Software and Software Documentation"), shall be deemed to be the property of ESD and all right, title and interest therein to the same shall vest in ESD.

F. For Software License Agreements

For software license agreements regarding any and all pre-existing computer Software and Documentation including Software/Documentation developed by the Bidder or purchased from outside sources in the course of performance on an Agreement, the Bidder hereby grants to ESD a nonexclusive, royalty-free, irrevocable, license to ESD, for:

- a. All Software and Software Documentation (as herein above defined) developed or purchased during the performance of an Agreement; and
- b. Only that Contractor-Owned Pre-Existing Computer Software/Documentation (as herein above defined) which forms an integral and necessary operating component of the Bidder-Developed Computer Software created under an Agreement;

- c. This license shall include the right to reproduce for archival purposes only, and to use and make and permit others to use and make any modifications necessary to the Bidder-Developed Computer Software and Software Documentation, and the Bidder-Owned Pre-Existing Software/Documentation;
- d. The rights granted by this license do not include any rights to derivative works, modifications, revisions, and upgrades to the Bidder-Developed Computer Software and Software Documentation which are developed by the Bidder after the term of an Agreement, or any extensions thereto, expires or is terminated.

G. Other Intellectual Property Rights:

Except for those intellectual property rights otherwise addressed in sections X.A. through X.F. above, the Bidder agrees that all other patentable or copyrightable ideas, writings, drawings, inventions, designs, parts, machines or processes, together with any drafts of same or other intermediate components thereof which may be either confidential or proprietary, developed as a result of, or in the course of, an Agreement rendered to ESD by the Bidder or any of its employees or subcontractors during the term of an Agreement (hereinafter “Items”) shall be deemed to be a “work made for hire”(as herein above defined), and shall be provided to and become the exclusive property of ESD. If it is determined that any Items encompassed above do not fall within the definition of “work made for hire” (as defined in Section 101 of Title 17 of the U.S.C.), the Bidder hereby covenants and agrees to transfer all right, title and interest in any such Items to ESD, and will cooperate with ESD, as is necessary, in the processing and execution of any and all documents needed to cause said transfer of all right, title and interest. Bidder hereby assigns all rights in such intellectual property to ESD, and will ensure that its employees and subcontractors shall, supply all assistance reasonably requested in securing for ESD’s benefit any patent, copyright, trademark, service mark, license, right or other evidence of ownership of any such intellectual property, and will provide full information in regards to any such Item and execute all appropriate documentation prepared by ESD in applying or otherwise registering, in ESD’s name, all rights to any such Items. ESD has the right to grant licenses to make, use, buy or sell any Items derived from the services performed under an Agreement. Provided however, upon mutual agreement of the Bidder and ESD, ESD may waive its property rights, in writing, to any and all patentable or copyrightable ideas, writings, drawings, inventions, designs, parts, machines or processes, together with any drafts of same or other intermediate components thereof which may be either confidential or proprietary, developed as a result of, or in the course of, an Agreement.

H. Additional rights

ESD reserves the right to include additional or revised intellectual/personal property provisions in an Agreement in addition to or in place of those described herein, with regard to the ownership (exclusive and/or nonexclusive) of any property or work product created or purchased as a result of any Agreement resulting from this RFP. The presumption is that, unless otherwise stated and agreed to in writing, all intellectual property is owned by ESD, including reports, surveys and all other works made or performed for hire. Specifically exempt from the provisions of this paragraph are property, plant and equipment provided by the Bidder to ESD, for the purpose of carrying out the provisions of this RFP. Property, plant and equipment may be subject to intellectual/personal property regulation when agreed to in writing by the parties.

IX. CONTRACTUAL REQUIREMENTS

This section contains additional information about the forms that are required to be included in each Bidder’s submission pursuant to Section VI of this RFP, as well as information about ESD’s procurement requirements.

i. Conflicts of Interest

Respondent must attest it has read, understood and will comply with the following provision <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>. ESD shall have the right to disqualify any respondent to this RFP or terminate any contract entered into as a result of this RFP should ESD determine that the Respondent has violated any of these requirements.

- A. Gifts and Offers of Employment:** Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.
- B. Disclosure of Potential Conflicts:** Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.
- C. Disclosure of Ethics Investigations:** Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Joint Commission on Public Ethics or its predecessor State entities (collectively, "Commission"), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

ii. State Finance Law Sections 139-j and 139-k forms

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential Bidders and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the "Restricted Period"), be conducted only with the designated contact persons listed above; the completion by Bidders of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC website under "RFPs/RFPs"); and periodic updating of such forms during the term of any contract resulting from this RFP.

Bidders must submit the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer's Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal. Copies of these forms are available at:

https://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by Bidders during the Restricted Period, make determinations of the responsibility of Bidders and make all such information publicly available in accordance with applicable law. If a Bidder is found to have knowingly and willfully violated the State Finance Law provisions, that Bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible Bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is referenced on the cover of this RFP.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at:

http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf All potential Bidders are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

iii. Vendor Responsibility Questionnaire

All Bidders to this RFP must be "responsible," which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFP, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the Respondent, if any, shall include clauses providing that the Respondent remain "responsible" throughout the term of the contract, that ESD may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFP.

To assist in the determination of responsibility, ESD requires that all Bidders register in the State's Vendor Responsibility System ("Vend-Rep System"). The Vend-Rep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that State agencies award contracts only to responsible vendors. Bidders are to file the required Vendor Responsibility Questionnaire online via the Vend-Rep System or may choose to complete and submit a paper questionnaire. Please include a copy of your Vend-Rep submission receipt or paper questionnaire with your proposal.

To enroll in and use the Vend-Rep System, see the System Instructions available at www.osc.state.ny.us/vendrep or go directly to the Vend-Rep system online at <https://portal.osc.state.ny.us>. For direct Vend-Rep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Bidders opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website (http://www.osc.state.ny.us/vendrep/forms_vendor.htm) and execute accordingly pertaining to the company's trade industry. Per the website, Bidders are to "Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other)."

In addition, please see link to EO-192: <https://www.governor.ny.gov/news/no-192-executive-order-imposing-continuing-vendor-integrity-requirements-state-contracts>

iv. Iran Divestment Act

Every Proposal made to ESD pursuant to a competitive solicitation must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

The list in question is maintained by the Office of General Services. No Response that fails to certify compliance with this requirement may be accepted as responsive. For further information and to view this list please go to: <https://ogs.ny.gov/system/files/documents/2019/03/listofentities.pdf>

v. Executive Order 177

In accordance with New York State Executive Order 177, all bidders must certify that they are in compliance with the New York State Human Rights Law which prohibits discrimination and harassment based on a protected class, and which requires reasonable accommodation for persons with disability or pregnancy related conditions.

The required certification for can be found at: <https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf> and must be signed and included in all Proposals.

vi. Non-Discrimination and Contractor & Supplier Diversity Requirements CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

Pursuant to New York State Executive Law Article 15-A and Parts 140-147 of Title 5 of the New York Codes, Rules and Regulations, ESD is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of ESD contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an overall goal of **30 percent** for MWBE participation, **15 percent** for New York State-certified Minority-owned Business Enterprise ("MBE") participation and **15 percent** for New York State-certified Women-owned Business Enterprise ("WBE") participation (based on the current availability of MBEs and WBEs). The Contractor must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the

required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

The Respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

In accordance with 5 NYCRR § 142.13, the Contractor further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and ESD may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, Respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Office of Contractor and Supplier Diversity ("OCSD") at OCSD@esd.ny.gov.

Additionally, Respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan with the proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD for review and approval.

ESD will review the submitted MWBE Utilization Plan and advise the Respondent of ESD acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the Respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at OCSD@esd.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the proposal.

ESD may disqualify a respondent as being non-responsive under the following circumstances:

- a) If a respondent fails to submit an MWBE Utilization Plan;
- b) If a respondent fails to submit a written remedy to a notice of deficiency;
- c) If a respondent fails to submit a request for waiver; or
- d) If ESD determines that the respondent has failed to document good faith efforts.

The successful Respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total

waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful Respondent will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to ESD, by the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Respondent agrees with all of the terms and conditions **SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES**. The Respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the “Work”), except where the Work is for the beneficial use of the Respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The Respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, OCSD-1, to ESD with its bid or proposal.

If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit Workforce Utilization Reports, in such format as shall be required by ESD on a quarterly basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

The required forms can be found at the following web addresses:

Form OCSD-1: <https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf>

Form OCSD-2: <https://esd.ny.gov/sites/default/files/OCSD-2-Staffing-Plan.pdf>

Form OCSD-3:

<https://esd.ny.gov/sites/default/files/OCSD-3-Workforce-Utilization-Report.xlsx>

Form OCSD-4: <https://esd.ny.gov/sites/default/files/OCSD-4-Utilization-Plan.pdf>

Form OCSD-5: <https://esd.ny.gov/sites/default/files/OCSD-5-Waiver-Request-Form.pdf>

Form OCSD-6: <https://esd.ny.gov/sites/default/files/OCSD-6-Compliance-Report.pdf>

In the event that the above links are unavailable or inactive, the forms may also be requested from OCSD at OCSD@esd.ny.gov.

Diversity Practices

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Bidders is practical, feasible, and appropriate. Accordingly, Bidders shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (**See Appendix C**).

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. ESD recognizes the need to promote the employment of service-disabled veterans and to ensure that certified SDVOBs have opportunities for maximum feasible participation in the performance of ESD contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

Contract Goals

- A. ESD hereby establishes an overall goal of **3 percent** for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

SDVOB Utilization Plan

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the

percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.

- C. ESD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. ESD may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If ESD determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including, but not limited to, a finding of Contractor non-responsibility.

Request for Waiver

A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at ESD for guidance.

B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form OCSD-5, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

D. If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to OCSD.

Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto;
- (2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected;
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs which ESD determined were capable of fulfilling the SDVOB goals set in the Contract;
- (4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- (5) Other information deemed relevant to the waiver request.

Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to ESD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form OCSD-6 available on the ESD website and should be completed by the Contractor and submitted to ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OCSD@esd.ny.gov.

Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

vii. Encouraging the Use of NYS Businesses in Contract Performance Form

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. In order for ESD to assess the use of New York State businesses in each

Proposal, ESD requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible here: <http://esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>.

viii. Certification under State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a (“STL 5-a”). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Bidders to this solicitation must include in their Proposals a properly completed Form ST-220-CA

(http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf), or an affidavit (http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and nonresponsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

ix. Schedule A

Following final selection of a Respondent, ESD will prepare a contract defining all project terms and conditions and the Respondent’s responsibilities in conformance with Schedule A. A sample can be found at: https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf

Please note Bidders do not need to complete the entire Schedule A with the submission of their Proposal. However, Bidders should still review these terms, which are standard in all ESD contracts, and raise any concerns present prior to submission of their Proposal, as successful Bidders will need to accept these terms prior to contract execution.

x. Project Sunlight

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, “appearances” (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Bidders and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

xi. Insurance Requirements

The selected Bidder will be required to provide the following insurance (at a minimum and to the extent applicable):

- Commercial General Liability of \$1 million per occurrence and \$2 million in the aggregate;
- In the event that Respondent is using a vehicle in business, Commercial Automobile insurance with a limit of not less than \$1 million;

- Must show evidence of Worker's Compensation & Employer's Liability insurance at State statutory limits;
- Must show evidence of Disability insurance coverage at State statutory limits;

NYS Urban Development Corporation d/b/a Empire State Development (ESD) must be named as additional insured on a primary and non-contributory basis on all of the following policies: Commercial General Liability and Auto Liability. All policies above should include a waiver of subrogation in favor of ESD.

xii. W-9 Form

Provide a completed W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>), submit with proposal.

APPENDIX A

New York State Agencies and Public Authorities

Adirondack Park Agency
Aging, State Office for the
Agriculture and Markets, Department of
Albany County Airport Authority
Albany Port District Commission
Alcoholic Beverage Control, Division of
Alcoholism and Substance Abuse Services, Office of
Alfred Sewer Authority
Almond Sewer Authority
Arts, Council on the
Audit and Control, Department of (a/k/a State Comptroller's Office)
Banking Department
Battery Park City Authority
Bridge Authority
Budget, Division of the
Capital District Transportation Authority
Cayuga County Water & Sewer Authority
Children and Family Services, Office of
City University Construction Fund
City University of New York
Civil Service, Department of
Commission on Public Integrity
Consumer Protection Board
Correction, State Commission of
Correctional Services, Department of
Crime Victims Board
Criminal Justice Services, Division of
Developmental Disabilities Planning Council
Dormitory Authority
Economic Development, Department of
Education Department, State
Elections, State Board of
Empire Center at the Egg (Empire State Performing Arts Center Corporation)
Employee Relations, Office of
Energy Research and Development Authority
Environmental Conservation, Department of
Executive Chamber
Financial Control Board
Foundation for Science, Technology & Innovation (Formerly NYSTAR)
General Services, Office of
Health, Department of

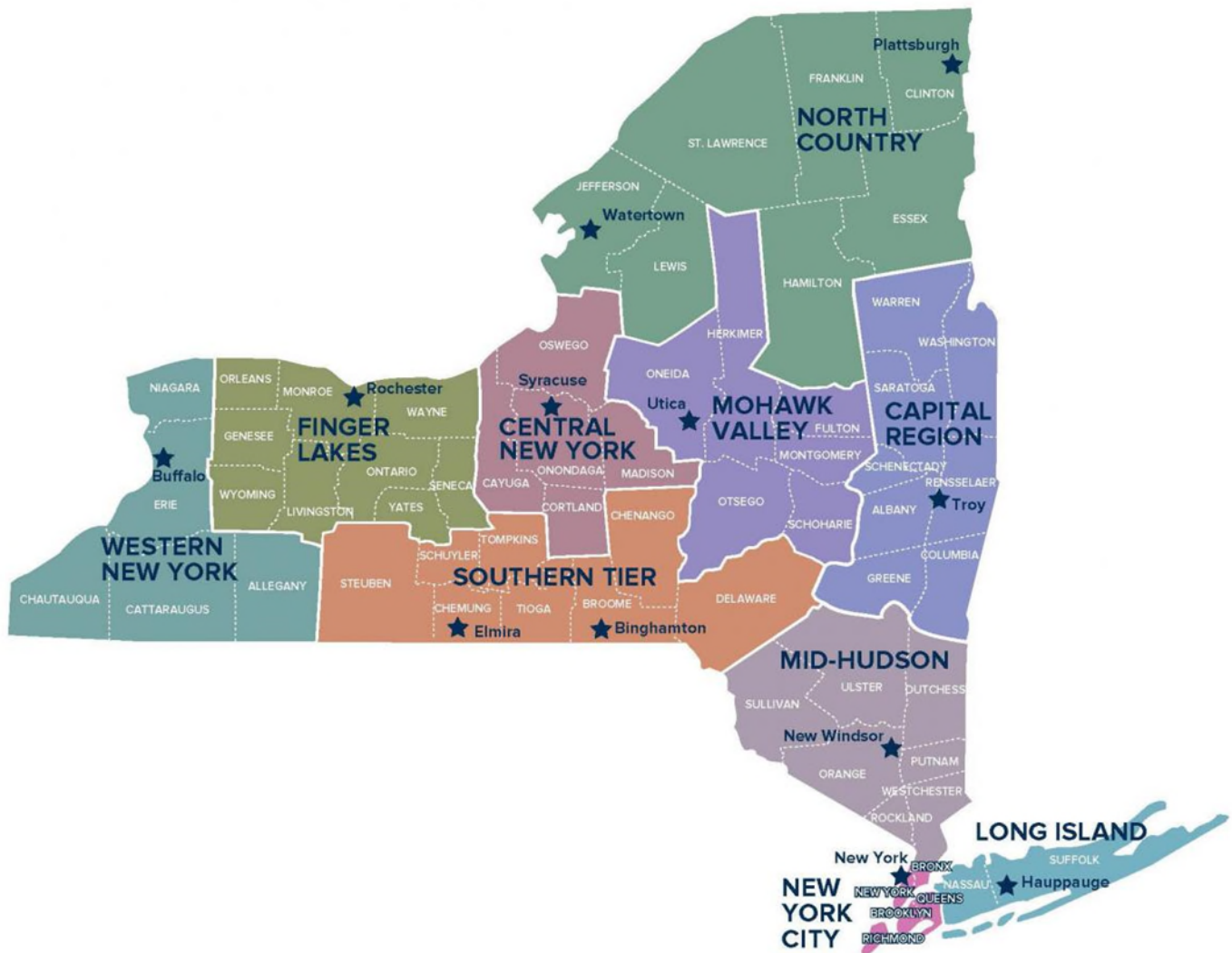
Higher Education Services Corporation
Homeland Security, Office of
Hornellsville Sewer Authority
Housing and Community Renewal, Division of
Housing Finance Agency
Hudson River Park Trust
Hudson River/Black River Regulating District
Human Rights, Division of
Industrial Exhibit/State Fair (Industrial Exhibit Authority)
Inspector General, Office of the State
Insurance Department
Insurance Fund
Labor, Department of
Lake George Park Commission
Law, Department of
Livingston County Water & Sewer Authority
Long Island Market Authority
Long Island Power Authority
Long Island Rail Road Company
Lottery, Division of
Medicaid Inspector General, Office of
Mental Health, Office of
Mental Hygiene, Department of
Mental Retardation and Developmental Disabilities, Office of
Metro-North Railroad Company
Metropolitan Transportation Authority
Military and Naval Affairs, Division of
Mortgage Agency, State of New York
Motor Vehicles, Department of
MTA Bridges and Tunnels
MTA Long Island Bus
MTA New York City Transit Authority
Natural Heritage Trust
New York City School Construction Authority
Niagara Falls Water Authority

Niagara Falls Water Board
Niagara Frontier Transportation Authority
NYS Athletic Comm'n
NYS Emergency Management Office
NYS Employment Relations Board
NYS Non-Profit Racing Association Oversight Board
NYS Office of Cyber-Security and Critical Infrastructure Coordination
NYS Office of Federal Affairs
NYS Tug Hill Commission
Office Of National And Community Service is separately appropriated but it is housed and
staffed within OCFS

Olympic Regional Development Authority
Parks, Recreation and Historic Preservation, Office of
Parole, Division of
Port of Oswego Authority
Power Authority
Prevention of Domestic Violence, Office for the
Probation and Correctional Alternatives, Division of
Public Employment Relations Board
Public Service, Department of
Quality of Care and Advocacy for Persons with Disabilities
Racing and Wagering Board, State
Real Property Services, Office of
Regulatory Reform, Governor's Office of
Roosevelt Island Operating Corporation
Schenectady Metroplex Development Authority
State Insurance Fund
State Police, Division of
State University Construction Fund
State University of New York
State, Department of
Tax Appeals, Division of
Taxation and Finance, Department of
Technology, Office for
Temporary and Disability Assistance, Office of
Thruway Authority
Transportation, Department of
Triborough Bridge and Tunnel Authority
Unified Court System
Upper Mohawk Valley Memorial Auditorium
Upper Mohawk Valley Regional Water Board
Upper Mohawk Valley Regional Water Finance Authority
Urban Development Corp (a/k/a Empire State Development Corp)
Veterans' Affairs, Division of
Welfare Inspector General, Office of
Workers' Compensation Board

APPENDIX B

New York State Regions



Western New York: Allegany, Cattaraugus, Chautauqua, Erie, Niagara

Finger Lakes: Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming, Yates

Southern Tier: Broome, Chemung, Chenango, Delaware, Schuyler, Steuben, Tioga, Tompkins

Central New York: Cayuga, Cortland, Madison, Onondaga, Oswego

Mohawk Valley: Fulton, Herkimer, Montgomery, Oneida, Otsego, Schoharie

North Country: Clinton, Essex, Franklin, Hamilton, Jefferson, Lewis, St. Lawrence

Capital Region: Albany, Columbia, Greene, Saratoga, Schenectady, Rensselaer, Warren, Washington

Mid-Hudson: Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester

New York City: Bronx, Kings, New York, Richmond, Queens

Long Island: Nassau, Suffolk



Appendix C

DIVERSITY PRACTICES QUESTIONNAIRE

I, _____, as _____ (title) of _____ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals.

2. What percentage of your company's gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company's clients or customers?

3. What percentage of your company's overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company's clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?¹

¹ Do not include onsite project overhead.



4. Does your company provide technical training² to minority- and women-owned business enterprises? Yes or No

If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?

If Yes, identify the governmental mentoring program in which your company participates and provide evidence demonstrating the extent of your company's commitment to the governmental mentoring program.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

² Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.



If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No

If Yes, provide documentation of program activities and a copy of policy or program materials.

8. Does your company plan to enter into partnering or subcontracting agreements with New York State certified minority- and women-owned business enterprises if selected as the successful respondent? Yes or No

If Yes, complete the attached Utilization Plan



All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of
Owner/Official

Printed Name of
Signatory

Title

Name of Business

Address

City, State, Zip



STATE OF _____

COUNTY OF _____) ss:

On the ____ day of _____, 201_, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

Notary Public